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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-814

MID-CONTINENT SPRING
COMPANY OF KENTUCKY, Petitioner

v.

MRS. JANE MITCHELL, Respondent

RESPONDENT'S BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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STATEMENT

Petitioner's statements related to the facts are accepted; however, that part of petitioner's "statement" dealing with the interpretation of Crosslin v. Mountain State Telephone and Telegraph, 400 U.S. 1004 (1971) is not accepted as will be discussed under Argument II.

ARGUMENTS

I

INITIAL REFERRAL TO A STATE AGENCY WITH LIMITED AND SPECIAL JURISDICTION IS NOT REQUIRED UNDER SECTION 706(B) OF TITLE VII, CIVIL RIGHTS ACT OF 1964, 42 USC § 2000-e-5; BUT ASSUMING ARGUENDO THAT SUCH REFERRAL IS REQUIRED, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S FAILURE TO DO SO WOULD ONLY CONSTITUTE A PROCEDURAL DEFECT, CURABLE ON REMAND.

The legislative history pertinent to the enactment of Title VII indicates that the overriding objective of this legislation was the elimination of invidious employment discrimanation. Tipler v. E. I. du

Pont de Nemours & Company, 443 F 2d 125 (C.A. 6, 1971). As a procedural method to attain this objective, Congress established a 60-day period of exclusive state jurisdiction prior to federal involvement in those instances where state law authorized relief from the invidious employment and discrimination by means of state agencies with general jurisdiction to deal with the full range of discriminatory employment practices. It should be emphasized that by virtue of the legislative history surrounding the enactment of Title VII it is obvious that it was the intent of Congress that referral be made by the EEOC or other federal agency only when the state involved has an agency with general jurisdiction empowered to resolve with full range of discriminatory employment practices alleged in the complaint.

While Kentucky has a Fair Employment Practices Commission with general jurisdiction to deal with the full range of discriminatory employment practices related to race, color, religion, and national origin, it has failed to extend this same protection on the basis of sex. Under Kentucky law, neither the Kentucky

Fair Employment Practices Commission or any other state agency is empowered to grant relief similar or identical to the remedies intended by the United States Congress. Because the state remedy is insufficient, the only remedy available to respondent, Jane Mitchell, is that afforded under federal law. The respondent has followed the appropriate and the only procedural remedies. The relief provided by the Kentucky Equal Pay Act is an insufficient basis upon which to cut off the assertion of federal rights.

Finally, even assuming arguendo, that prior resort to the state authorities administering the "Kentucky Equal Pay Act" was required under section 706(B) as to the equal pay fraction of Respondent Mitchell's claim, that defect is curable upon remand by providing the Kentucky authorities an opportunity to consider this portion of Respondent Mitchell's claim for the required period of time. Crosslin, supra. In Crosslin, this Court remanded to the court in Arizona with instructions to consider the Solicitor's General suggestion.

The whole thrust of the Solicitor General's brief which this Court suggested be considered was based upon the theory that Ms. Crosslin's right to relief should not be destroyed by a judicial determination, long after the event, that the EEOC's view of deferral under section 706(B) was incorrect. The brief stressed the well-settled principle that Commission action or inaction does not affect federal court jurisdiction. Fekete v. United States Steel Corp., 424 F.2d 331,336 (3rd Cir.1970).

To allow Respondent Mitchell, on remand, to file her charge with the appropriate Kentucky agencies in order to eliminate any question as to federal jurisdiction, clearly comports with this Court's view concerning statutes enacted to vindicate humanitarian policies.[1] Equitable principles dictate that where a plaintiff has attempted to comply with the procedural requirements for maintaining the action under a remedial, humanitarian statute, failure to do so

1. That Title VII is such a statute is beyond dispute. Griggs v. Duke Power Co., 401 U.S. 424,91 S.Ct. 849(1971)

because of a reasonable mistake will not be held to bar her action at least where the defendant has not been prejudiced. Burnett v. New York Central R. R. Co., 380 U.S. 424,85 S.Ct. 1050(1965). A guiding principle in Title VII litigation is that laymen are unschooled in the law and must, therefore, be protected by courts from legal pitfalls. Sanchez v. Standard Brands, Inc., 433 F 2d, 455,462 (5th Cir., 1970).

Petitioner, Mid-Continent Spring Company of Kentucky, is not prejudiced in its defense because of the procedure taken by the respondent gave the petitioner timely notice of Respondent Mitchell's grievance. The decision of the Sixth Circuit Court of Appeals allowing Respondent Mitchell to follow the procedure of going through a state agency comports with concepts of fair play and substantial justice.

II

THE MANDATE OF THE SIXTH CIRCUIT COURT OF APPEALS DOES NOT GO FAR BEYOND THE MANDATE OF THIS COURT IN THE CROSSLIN CASE.

Respondent contends that the Crosslin case remand to the U. S. District Court for the District of Arizona for reconsideration in light of the suggestions contained in the brief of the Solicitor General means that this Court does not desire to make the determination in each and every case of whether or not referral to a state agency is necessary. In Crosslin, the district court was given a choice to follow or not to follow the Solicitor General's suggestion. Upon remand, this Court stated that it should consider the Solicitor General's opinion with the district court having the choice of either following or not following this opinion. In the present case, the Sixth Circuit Court of Appeals made the determination that this Court allowed the district court in Crosslin to make, i.e. retention of jurisdiction in the district court for a period sufficient to allow Mrs. Mitchell or the EEOC to seek redress under the procedures authorized by the statutes of Kentucky. Respondent contends this is not error but a just and equitable decision in an effort to allow Mrs. Mitchell to retain

her claim. The Sixth Circuit Court of Appeal's decision merely comports with the determination by the United States Supreme Court that Mrs. Mitchell should not lose her cause of action because of the failure of the EEOC to refer her complaint to a state agency. Love v. Pullman Co., 404 US 522 (1972).

CONCLUSION

No adequate remedy existed under Kentucky statutes; therefore, the failure to refer respondent's claim to a Kentucky agency was not fatal. The most it could be considered would be a procedural defect which the Sixth Circuit Court of Appeals has cured on remand. The Crosslin case was not misinterpreted or extended by the Sixth Circuit Court of Appeals in the present case. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

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